

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
December 28, 2010

In the Matter of E. C. QUANTON, Minor.

No. 298265
Macomb Circuit Court
Family Division
LC No. 2008-000458-NA

In the Matter of QUANTON, Minors.

No. 298293
Macomb Circuit Court
Family Division
LC No. 2008-000457-NA

Before: SHAPIRO, P.J., and SAAD and K.F. KELLY, JJ.

PER CURIAM.

In these consolidated appeals, respondent father appeals a trial court order that terminated his parental rights to E. C. Quanton and respondent mother appeals the same order that terminated her parental rights to J. A. Quanton and E. C. Quanton under MCL 712A.19b(3)(c)(i), (g), and (j). For the reasons set forth below, we affirm.

In termination proceedings, this Court must defer to the trial court's factual findings if those findings do not constitute clear error. MCR 3.977(K). We review for clear error both the trial court's decision that a ground for termination has been proven by clear and convincing evidence and the court's best interests determination. *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009). "A finding is 'clearly erroneous' [if] although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

With regard to respondent mother, the conditions that led to adjudication included her substance abuse, inability to care for her children because of the substance abuse and anxiety, failure to address her mental health issues, failure to support her children or provide direct care, and a substantiated neglect referral to Children's Protective Services (CPS) in 2007 after which she received services. The record shows that respondent mother did not rectify these conditions.

Respondent mother used cocaine in September 2009 and, in October 2009, she was arrested for operating a vehicle while impaired (OWI). Respondent mother's arrest for OWI occurred while she was enrolled in an intensive outpatient substance abuse treatment program. Respondent mother continued to experience significant anxiety caused by substance abuse and she continued to express a feeling of being overwhelmed. The maternal grandmother, who cared for the children and supervised some of respondent mother's visits, testified that respondent mother's visits gradually tapered off and that respondent mother spent more time on the computer than with the children and she began to leave the visits earlier and earlier. Under these circumstances, the trial court did not clearly err in finding that the conditions of adjudication continued to exist or that there was no reasonable likelihood that the conditions would be rectified within a reasonable time considering the children's ages, which were six years and three years at the time of the termination hearing. Respondent mother received services in 2007 and again beginning in 2008 for a period of almost two years and she made little progress to correct her problems. Therefore, the trial court did not clearly err in finding that section (c)(i) was established by clear and convincing evidence.

The evidence also establishes that respondent mother had not provided proper care and custody for her children, she would not be able to do so within a reasonable time, and there was a reasonable likelihood, based on respondent mother's conduct or capacity, that the children would be harmed if returned to her custody. In addition to her relapse into using cocaine and alcohol, respondent mother was involved in repeated episodes of domestic violence involving respondent father. Respondent mother did not attend domestic violence counseling as ordered and she testified at trial that she and respondent father continued to work on their relationship. Respondent mother had a previous substantiated CPS incident and received services in 2007, she was found unable to take care of her children in 2008, and she received numerous services but was unable to provide a stable home environment for her children at the time of the termination hearing because of her substance abuse and involvement in domestic violence. Respondent mother had always relied on her mother to take care of her children, and she testified that she used cocaine because she became overwhelmed. Respondent mother also told her foster care worker that, despite working full time and contributing no financial support for the care of her children, she struggled to support herself. Based on the evidence and the fact that there was no improvement in these areas over the nearly two years the children were in care, the trial court did not clearly err in finding that MCL 712A.19b(3)(g) and (j) were established by clear and convincing evidence.

"If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). The children looked to their grandmother as their primary caretaker and called their grandmother "mom." Respondent mother was not capable of caring for the children after nearly two years of services. As discussed, the trial court did not clearly err in finding statutory grounds for termination, and the record shows that the trial court did not clearly err in finding that termination of respondent mother's parental rights was in the best interests of the children.

With regard to respondent father, the conditions leading to adjudication included his failure to provide financial support for his daughter, his failure to provide her with a safe

environment despite knowing that respondent mother had substance abuse and mental health issues, and his failure to regularly visit the child. At the time of the termination hearing, respondent father continued to provide no financial support for his daughter, he had not seen her in over eight months, and he did not establish a safe home environment for her. Although respondent father said that he was working and that he had a home for his daughter, he did not provide verification of employment to his foster care worker before the hearing and he refused to provide his address so that his home could be inspected. At a December meeting just before the termination hearing began, it was reported that respondent father had not participated in services for over eight months and had told the foster care worker that he was not interested in restarting services, despite her promise to attempt to restart visitation. Under these circumstances, the trial court did not clearly err in finding that MCL 712A.19b(3)(c)(i) was established by clear and convincing evidence. The conditions of adjudication continued to exist and, considering the two years the case was pending and respondent father's lack of progress, there was no reasonable likelihood that the conditions would be rectified within a reasonable time considering his daughter's age.

The trial court also did not clearly err in finding that MCL 712A.19b(3)(g) and (j) were established with regard to respondent father. Respondent father did not participate in any services from July 2009 to the start of the termination hearing in February 2010. He did not see his daughter during that time, he was involved in several incidents of domestic violence with respondent mother, and did not provide drug screens. After the start of the termination hearing, respondent father only made a half-hearted attempt to restart services, failing to restart individual counseling and drug screens. He provided no verification of employment or housing because he refused to provide the foster care worker with his address when requested. And, despite his violent relationship with respondent mother, respondent father testified that he was communicating with respondent mother at the time of the termination hearing and that she would be a good parent to their daughter. Respondent father's lack of judgment, evidenced by his continued involvement with respondent mother, would place his daughter in danger of being harmed if returned to his custody. Respondent father's lack of involvement in his parent-agency agreement and in his daughter's life, and his involvement in domestic violence, established that he could not provide proper care and custody for his daughter at the time of the termination hearing. The nearly two years his daughter was in care without progress by respondent father constituted clear and convincing evidence that respondent father would not be able to provide proper care and custody within a reasonable time considering his daughter's age.

The trial court also did not clearly err in its best interests determination. Respondent father had not seen his daughter since July 2009, and before that, his visits were sporadic. His daughter, who was 3½ years old at the time of termination, questioned whether a picture of her brother's father was her father. Clearly, whatever bond the two shared before July 2009 was severely weakened by respondent father's failure to visit. Based on respondent father's failure to participate in the parent-agency agreement, lack of ability to provide proper care and custody, and lack of a strong bond with his daughter, the trial court did not clearly err in finding that termination of respondent father's parental rights was in the child's best interests.

In an argument in his appellate brief that was not included in his statement of questions presented, respondent father raises several issues regarding the participation of the maternal grandparents during proceedings. Specifically, he argues that the trial court improperly

considered the testimony of the maternal grandmother, who was biased against him. However, a review of the trial court's findings of fact and conclusions of law reveals that the trial court did not cite any evidence obtained from the maternal grandmother. Further, this Court must defer to the trial court's factual findings if those findings do not constitute clear error. MCR 3.977(K). Respondent father further contends that the trial court erred by allowing the maternal grandparents to have retained counsel present at proceedings and by allowing the maternal grandmother to testify in violation of the sequestration order. Respondent father did not object to the grandparents' representation or the grandmother's testimony during proceedings, and this issue was not addressed by the trial court. Therefore, the issue is not preserved. Unpreserved, non-constitutional error is not reversible unless the error is plain and affects a party's substantial rights. *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999). A trial court's decision regarding the remedy for a violation of a sequestration order is reviewed for an abuse of discretion. *People v Meconi*, 277 Mich App 651, 654-655; 746 NW2d 881 (2008).

The children were placed with their maternal grandparents when they were removed from respondent mother's custody. The maternal grandparents were represented by retained counsel at hearings up to the first termination hearing, but their counsel's participation was minimal. The trial court did not plainly err by allowing such representation where the court rules anticipate participation by relative caregivers. MCR 3.975(E) requires the trial court to consider any information concerning the child from a relative with whom the child is placed and MCR 3.976(C) states that relative caregivers are entitled to participate in permanency planning hearings. Thus, if error occurred, it was not plain and, due to the minimal participation of counsel, respondent father has not established that the participation affected his substantial rights.

The trial court did not abuse its discretion by allowing the maternal grandmother to testify in violation of the sequestration order. A sequestration order was granted at the beginning of the termination hearing. However, the maternal grandmother was allowed to remain in the courtroom because petitioner stated that it did not intend to call her as a witness. At some later point, petitioner changed its mind and was allowed to call the maternal grandmother without objection. This Court addressed the issue of sequestration in *Meconi*, stating generally:

The purposes of sequestering a witness are to prevent him from coloring his testimony to conform with the testimony of another, and to aid in detecting testimony that is less than candid. Additionally, the United States Supreme Court has recognized three sanctions that are available to a trial court to remedy a violation of a sequestration order: (1) holding the offending witness in contempt; (2) permitting cross-examination concerning the violation; and (3) precluding the witness from testifying. Although usually stated in the context of a defense witness's exclusion in a criminal case, courts have routinely held that exclusion of a witness's testimony is an extreme remedy that should be sparingly used. [*Meconi*, 277 Mich App at 654 (citations omitted).]

Additionally, the *Meconi* Court noted that exclusion of the witness was not error where the violation of the sequestration order was an honest mistake and where it was a bench trial. *Meconi*, 277 Mich App at 654-655. Here, there is no indication that the violation of the order was purposeful and this was a bench trial. Therefore, if error occurred, it was not plain and did not affect respondent father's substantial rights.

Affirmed.

/s/ Douglas B. Shapiro
/s/ Henry William Saad
/s/ Kirsten Frank Kelly